

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges
of Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) [Part XIV]
Regulatory Advisory Panel
Pocahontas Building Auditorium, Richmond, Virginia
October 17, 2012**

Regulatory Advisory Panel Members Present

Phil Abraham, Virginia Association of Commercial Real Estate
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
Will Bullard, U.S. Navy/Dept. of Defense
Pat Calvert, James River Association
Corwin Chamberlain, Dominion
Ann-Neil Cosby, Sands Anderson
Todd Flippen, Augusta County
John Fowler, Chesapeake Bay Foundation
Normand Goulet, NRVC
Jenny Johnson, Joyce Engineering
Jeff Kelble, Shenandoah Riverkeeper
Roy Mills, VDOT
David Nunnally, Caroline County
David Nichols, Town of Bridgewater
John Paine, HRPDC
Mike Toalson, Homebuilders Association of Virginia
Cabell Vest, Aqualaw
Keith White, Henrico County

Facilitator

Tanya Denckla Cobb, IEN

State Agency Staff Present

Marian Carroll, DCR
Michael Fletcher, DCR
Doug Fritz, DCR
Drew Hammond, DEQ
Mike Lee, DCR
John McCutcheon, DCR
Liz McKercher, DEQ
Joan Salvati, DCR
Ginny Snead, DCR
Michelle Vucci, DCR
Christine Watlington, VDOT

Others Present

Lee Hill, Joyce Engineering
Petrina Jones, Vectre Corp.
Ryan Murphy, Chesapeake Bay Foundation
John Newton, Henrico County
Chris Swanson, EEE

Welcome and Introductions

Ms. Snead called the meeting to order and welcomed RAP members, staff and guests to the 4th meeting.

Regulatory Action Overview, Committee Charge, and Regulatory Timeline

Ms. Snead reviewed the overview, charge and regulatory timeline.

Ms. Denckla Cobb reviewed the rules for discussion. She said that while there might be a litmus test to assess the comfort level with the process and current draft that the committee was not ready for a full test on consensus.

Discussions of Comments Received

Mr. Fritz said that comments had been received regarding training and some language suggestions. He said that he was still working through the comments that provided a thorough review of the regulation.

Discussion of Draft Text

Mr. Fritz referred to the current draft of the regulations. He noted that the areas in gray had not changed and that new language was underlined.

Mr. Toalson asked if the underlining was to make this version consistent with the regulations.

Mr. Fritz said that the intent was to make the permit simpler to read as well as to make it consistent with the law.

Ms. Snead noted that on lines 19-28 the definition of impaired water was added.

Mr. Mills asked if that included non surface waters.

Ms. Snead said that this covered the surface waters only.

Mr. Fritz said that it referred to a surface water discharge. Other waters were considered ground water. He said that a discharge to subterranean waters ultimately ended up as surface water and could be covered under the permit.

Mr. Mills asked if that meant that every discharge point had to be traced to surface water and a determination made as to whether or not it was impaired.

Mr. Fritz said that was correct.

Mr. Kelble indicated that he would like to submit additional comments.

Ms. Snead asked that comments be submitted to DCR by Wednesday, October 24.

Mr. Fritz noted that there would also be a public comment period.

Mr. Kelble said that he saw a lot of confusion regarding the definition of surface water.

Mr. Fritz said that surface water was defined in Part X of the regulations. He said that the definition of surface water included intermittent tributaries and wetlands.

Ms. Brumbaugh asked how this would incorporate TMDL conditions. She said that while the permit will regulate discharges during construction, the initial stormwater management plan has to address TMDLs. She noted that had to be approved prior to obtaining coverage under the general permit.

Mr. Fritz said that the post development controls would be implemented through Part II and Part III of the regulations.

Ms. Brumbaugh asked if that means that, while both had to be considered, this permit would only address impacts during construction.

Mr. Fritz said that was correct.

Mr. Nunnally asked if the identification of impaired waters could be handed in terms of the watershed or another kind of hydrological unit within the watershed.

Mr. Fritz distributed a handout with graphics that addressed discharging directly into an impaired segment. He said that a discharge directly into an impaired water with or without a TMDL would fall under this permit.

Mr. Beisch asked what would happen if the impairment was not related to the construction activities.

Mr. Fritz said that this applied only if the impairment was for sediment or nutrients. He said that if a TMDL was for PCBs or something else that would bring other requirements into play.

Mr. Bullard asked for clarity regarding watersheds and TMDLs. He asked if this referred to the whole watershed or just a segment.

Mr. Kelble asked if all intermittent streams were monitored by DEQ.

Ms. McKercher said that was the goal and that DEQ was making progress.

Mr. Toalson asked if a land disturbing activity was below the impairment of a stream why that would be considered discharging into an impaired stream.

Mr. Beisch asked if runoff producing event was defined elsewhere.

Mr. McCutcheon said that he was not aware of an official definition.

Ms. Johnson noted that, with reference to disturbing more than five acres in Southwest Virginia and other rural areas, more than five acres may be disturbed because of the nature of the project.

Mr. Fritz said that the distinction was between small and large construction.

Mr. Toalson noted that in rural areas where wells and driveways were included the area disturbed could often be greater than five acres.

Mr. Fritz said that this still came under the federal definition. He said that the size selection was based on two definitions of small construction activity and large construction activity. He said that, under the Clean Water Act and regulations, consideration was given that projects larger than five acres could have a greater impact than projects less than five acres.

Mr. Nunnally suggested it would be simpler to use the DEQ identification of impaired waters and TMDLs to complete the wasteload allocation. He said the issue was not surface water but was addressing the TMDL within that watershed.

Mr. Fritz said the impaired waters have to be addressed before the TMDL is approved.

Mr. Kelble asked in the acreage definition what acreage was permitted.

Ms. Snead said that it referred to the acreage to be disturbed. She said staff would look at the definition.

Mr. Fritz said that if another TMDL, such as one for PCBs, was brought into the construction activity the permit has allowed for that.

Mr. Kelble asked if the effluent limitation for the permit was consistent with the requirements of the TMDL.

Mr. Fritz said that the erosion and sediment control requirements in this permit were more stringent than in the previous permit.

Mr. Bullard asked if the increased inspection was an attempt to address a discharge that may not reach an impaired segment, but may be in an impaired watershed.

Mr. Fritz noted that, with regard to the ELGs, stabilization must begin immediately. He said the language came directly from the EPA permit.

Mr. Fritz said that under Virginia Erosion and Sediment law and regulation, Minimum Standard 1 says that final stabilization must occur within seven days. He said that the requirement does not need to be included in the permit.

Mr. Nunnally said that he was concerned that there were two sets of regulations, two sets of requirements. He said that while he understood one was for a local program and the other for construction that the requirements needed to be consolidated.

Ms. Snead said that related to the development of local programs. She said this permit was dealing directly with contractors.

Mr. Nunnally said that this was setting up localities with an enormous amount of new requirements that are overwhelming. He said that localities need one set of regulations to follow. He said that it was unfair for localities to have to take all the regulations and condense them down to present to the applicant.

Ms. Salvati said that localities could consolidate inspection criteria from the permit into their local inspection criteria.

Ms. Snead said that DCR understood the burden on localities. But she said that DCR has an obligation to make sure the permit meets EPA expectations.

Mr. Fritz said the alternative to not complying with the permit is to go through a lengthy and expensive process to obtain an individual permit.

Ms. Denckla Cobb said that conversations would continue with regard to helping local governments create programs that are consistent. She said that this was just the beginning of the programmatic effort.

Mr. Beisch said that the frustration was that this was patching the general permit instead of updating the Erosion and Sediment Control laws.

Ms. Denckla Cobb noted that the concern was whether inspectors would have to follow two sets of standards for the permit.

Mr. Toalson expressed a concern about the standard for 0.25 inches of rain. He said there needs to be a standard but the standard should be a runoff producing event that moves sediment.

A member said there has to be a measurable gage. (Is this gage or guage?)

Ms. Snead said that DCR would note the comment and review that section.

Mr. Kelble said that he was concerned that many times when it was raining there was actually no one on site to monitor.

Mr. Mills said there needed to be a time frame. He said that four inches of rain over three days is different than four inches of rain over three hours. He said that soil conditions and other variables need to be considered.

Ms. Snead noted the comment.

Ms. Snead noted that the added definition of “impaired waters” was just for this permit.

Mr. Goulet asked if it needed to say 2012 or if it could say “most recent.”

Mr. Hammond said that he understood the concern. He noted that at DEQ the discussion had been that there needed to be a definitive date in order to consider TMDLs established prior to that.

Mr. Goulet suggested the phrase say “most recently approved.”

Ms. Snead said that there might be a legal issue with “most recently approved” language.

Mr. Mills said that a date should be established and used. He said that VDOT has projects under design that can't be changed on the spur of the moment.

Mr. Beisch suggested the change be to the time of application not the time of issuance of the permit.

Ms. Denckla Cobb asked that members send ideas for specific language.

On line 76-78, Ms. Snead said that the definition for the term “minimize” came directly from EPA.

Mr. Fowler suggested that “economically practicable” be added.

Mr. Fritz said the language was directly from EPA.

Mr. Toalson questioned whether the language could be inconsistent with the EPA language.

Mr. Fritz said that the language has to be consistent with the regulations. He said that the federal regulations put the ELGs in the permits.

On line 82-87 with the reference to “qualified personnel,” Ms. Brumbaugh asked if this could be broken down into more than one sentence.

Mr. Fritz said that the language was from the regulations but suggested members submit suggested changes.

At this time the committee took a break.

Following the break, Mr. Nunnally asked to look again at the definition for runoff producing event. He said that he would recommend this include a reference to natural disasters that exceed the design threshold.

Ms. Snead asked that he submit that in written comment.

Ms. Snead proceeded to review the draft language.

1110 Purpose

There were no comments.

1120 Effective date of the permit

There were no comments.

1130 Authorization to discharge

Ms. Snead said that major changes to this section were not anticipated, but that the language was not ready for review.

1140 Qualifying state and local programs

Ms. Snead said that line 220 was edited to address the concern regarding the term “agent.”

Ms. Brumbaugh said that she thought localities would not be collecting fees.

Mr. Fritz said that this addressed the authority but localities may choose otherwise.

1150 Permit application (registration statement)

Ms. Snead noted the removal of the line 15 language. She said that with the ePermitting system once the application was approved it would go directly to DCR and a letter would be automatically generated.

1160 Termination of permit coverage

Ms. Snead said that this language would be revised to reflect the ePermitting process.

1170 General permit

A member asked who the language in lines 437-442 applied to.

Ms. Snead said that it spoke to the permit in general.

On line 440 Mr. Beisch asked if the Board would invalidate general coverage for facilities that do not meet the conditions.

Mr. Fritz said that the Board could make a case decision regarding an individual permit. This was giving the Board flexibility to decide.

Mr. Kelble asked who could bring the items to the Board.

Mr. Fritz said that staff would review that.

Mr. Mills said that VDOT had some 200-300 projects that may have already begun. He said that having to ask them to submit new registration statements would be a significant impact. He asked if there was a way just to assign a new permit number to the old permit number.

Mr. Fritz said that everyone has to reapply. He said that DCR would send out a notice to everyone that for permit coverage they must terminate or reapply. He said that hopefully the ePermitting system would be in place prior to that time.

Mr. Hammond asked what would happen if an operator identifies another area to be disturbed but was only given coverage for one area. Are they limited in being able to define the area?

Mr. Fritz said that SWPPP updates are not changing locations.

Regarding inspections, Mr. Nunnally asked if there were provisions for weekends to say the inspection could occur on the next work day. He said if operators were using third party inspectors it may be unreasonable to inspect on a Monday. He asked if two working days could be considered.

Mr. Fritz said that it was written so that the work would not have to be done on the weekend.

A member asked if the language on line 595 was attempting to assess two separate types of discharges.

Mr. Fritz said that this section needed to be reworded.

On line 601, Mr. Fowler said that he would like to see 20 acres changed to 10 and 50 acres changed to 20. He said that smaller activity should be captured.

Mr. Beisch said it would be helpful to determine the thresholds of prioritization.

Mr. Bullard said that line 595 seemed to exclude discharges to other waters that were impaired for sediment. He said this seemed to tie everything to the Bay TMDL.

Mr. Fritz said that staff would have to check the wording against the actual map.

Mr. Nunnally said that, on lines 600-604 with the reference to the fall line, this was creating another set of rules and distinctions. He suggested that this reference the Chesapeake Bay Act and projects subject to that act. He said that the Bay Act does a better job of identifying impact than the fall line. He said that using the fall line as a criterion was too difficult and that it would be better to use a criterion that already exists.

Mr. Toalson noted that there are other protection provisions within the Bay Act that are not required outside of Bay Act areas. He asked if this difference was really needed.

Mr. Fritz said that the inspections were for the Erosion and Sediment control program, not the buffers when the contractor left the site.

Mr. Bullard said that he would prefer to see something clean and specific like the fall line. He said that with regard to the Bay Act that Department of Defense attorneys have legal concerns with respect to creating zoning on federal lands.

Ms. Snead asked if there were additional questions on lines 606-627.

Mr. Chamberlain asked if the hazardous substances reference was just for spills released in construction. He asked if there would be legal issues with development of brownfields.

Ms. Snead said this was associated with construction activity.

Mr. Hammond suggested restoring the language on line 608 with regard to special conditions.

Ms. Snead moved on to line 693. Water quality protection.

Mr. Kelble said that he would like to supporting evidence for the minimum standards.

It was noted that references to the State Water Control Board need to be changed.

Ms. Snead moved to line 718: Section II Stormwater Pollution Prevention Plan.

Mr. Toalson suggested that line 742 read “legible approved” site plan.

Ms. Snead said that approval was in a different are and that went beyond the authority of the permit. She said she would compare that with other regulations.

Ms. Brumbaugh suggested that on line 750 “trap” should be replaced with “filter.”

Staff agreed to review.

On line 760, Mr. Mills asked if there was a requirement to have a rain gage on the site.

Mr. Nunnally said that a site inspection is much better than having a rain gage on site for a runoff producing event.

Mr. Fritz said that was open ended but what needed to be determine was how a runoff producing event was determined.

Mr. Beisch said a lot of counties assess daily rainfall. He said while that data was probably better but it was not available in all localities.

Mr. Paine said there was a huge variation between rainfall intensities.

Mr. Kelble said that he did not think it made sense to assess the rainfall anywhere but on site.

Mr. Goulet suggested specifying a radius of the site and providing information with the specific location of a rain gage within that radius.

Ms. Snead moved on to lines 780-782.

Ms. Brumbaugh asked if the controls for concrete wash would be addressed elsewhere.

Ms. Snead noted that was addressed on line 915.

Ms. Snead moved on to line 849. Stormwater management plan.

A member said that on line 920-931 it was crucial to say eliminate and not minimize the discharge.

Mr. Beisch said that on line 915 the concrete wash water did not need to be in a leak-proof pit.

Mr. Hammond said that ph can have substantial issues with leaking into groundwater.

It was noted that there may need a need to be specific language about groundwater contamination.

It was suggested that line 882 identify “qualified personnel.”

On line 936 a member asked if “instruction” could be substituted for “training” with the same results.

Ms. Snead said that DCR would rework this section. She asked members to submit suggested language.

At this time the committee took a break.

Mr. Abraham said that he also had concerns with the training aspects.

At this time the committee took a break.

Ms. Snead continued on line 947. Applicable state or local programs.

Mr. Mills noted that on line 943, requiring an update to all SWPPPs by July 1, 2014 was a nearly impossible task. He said there needed to be some type of grandfathering.

Mr. Fritz said that he could not allow grandfathering with the ELGs. He said the entire section was a result of the ELGs and addressed things that should already be in place in the SWPPP.

Mr. Nunnally asked if line 964 was for all pollutants or just construction related pollutants.

Mr. Fritz said that the permit speaks to construction related.

Ms. Brumbaugh asked about “qualified personnel.”

Mr. Nunnally said that his role was to look at compliance on the site and whether the inspections were appropriate.

Mr. Fritz said that the references to qualified personnel and inspections were from the federal government.

On line 998, Mr. Toalson recommended that subcontractors be identified when construction begins.

Ms. Snead continued with line 1033. Public Notification.

The RAP discussed the fact that the language review was not completed. It was suggested that to the next RAP meeting be delayed until November 15.

Ms. Snead said that could delay when the language is taken to the Board. The intent is to take the language to the Board at the December meeting. The Board must approve the language for the process to move forward.

The RAP agreed to convene the meeting on November 1 and add an additional meeting on Tuesday, November 13.

The meeting was adjourned.